

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

UFP ATLANTIC DIVISION, LLC, a
Michigan limited liability company,

Plaintiff,
v.

ROUTE 299 RETAIL CENTER, LLC;
HIGHLAND SQUARE DEVELOPMENT
LLC; MICHAEL BARNETT; DENISE
BARNETT; M&C OF DUTCHESS, LLC;
P. SALA & SONS CONSTRUCTION, INC.;
TECTONIC ENGINEERING & SURVEYING
CONSULTANTS, P.C.; CREIGHTON
MANNING ENGINEERING LLP; and
JOHN DOE Nos. 1-10, said names being
fictitious and unknown to Plaintiff, the persons
or parties intended being any and all tenants,
occupants, persons or corporations, if any,
having or claiming an interest in or lien upon
the premises described in the Amended Complaint,

**AFFIDAVIT IN SUPPORT OF
MOTION FOR DEFAULT
JUDGMENT**

Case No. 1:12-cv-053
MAD/ATB

Defendants.

MICHAEL W. DEYO, being duly sworn, deposes and says:

1. I am an associate in the law firm of Iseman, Cunningham, Riester & Hyde, LLP, attorneys for plaintiff UFP Atlantic Division, LLC (“UFP”), and as such, I am fully familiar with the facts set forth in this Affidavit, together with the pleadings and proceedings heretofore had herein by virtue of a review of the files maintained by this office.

2. I submit this Affidavit in support of UFP’s motion for a default judgment against defendant M&C of Dutchess, LLC.

3. This action was commenced originally by UFP on or about June 17, 2011, against Route 299 Retail Center, LLC (“Route 299”), Mr. Barnett, and Mrs. Barnett, in the State of Michigan Circuit Court for the 17th Judicial Circuit, at which time this action was assigned case

number 11-05547-CK in such court. The original purpose of this action was to recover a debt owed by Route 299, Mr. Barnett and Mrs. Barnett under a Mortgage Note.

4. On or about August 1, 2011, the original defendants removed Case No. 11-05547-CK from the 17th Circuit Court to the United States District Court for the Western District of Michigan, at which time this action was assigned case number 1:11-cv-00798-JTN in such court.

5. On or about January 10, 2012, this action was transferred to this Court by the Honorable Janet T. Neff, upon stipulation of UFP, Route 299, Mr. Barnett, and Mrs. Barnett.

6. UFP filed its Amended Complaint on March 1, 2012, which converted this action to one seeking to foreclose a mortgage owned by UFP. A copy of the Amended Complaint is attached hereto as Exhibit "A."

7. Upon filing the Amended Complaint, M&C of Dutchess, LLC was added as a defendant solely by reason of a subordinate mortgage it holds or may hold affecting the mortgaged premises being foreclosed herein.

8. The mortgage of M&C of Dutchess, LLC is subordinate to the lien of UFP's mortgage.

9. Upon information and belief, despite M&C of Dutchess, LLC being granted the aforementioned mortgage, M&C of Dutchess, LLC is not an entity formed or existing under the laws of the State of New York, or of any other state.

10. Upon information and belief, one or more of the purported principal members of M&C of Dutchess, LLC are principals of M&C of Dutchess, Inc., a corporation duly formed and existing under the laws of the State of New York.

11. Upon information and belief, the purposed business address of M&C of Dutchess, LLC is the same as M&C of Dutchess, Inc.

12. Service of the Summons and Amended Complaint was made under Fed. R. Civ. P. 4 upon M&C of Dutchess, Inc. Sued/Herein/As (“S/H/A”) M&C of Dutchess, LLC on March 8, 2012, by leaving a copy of the same with Chad Matice, Process Clerk for the New York Secretary of State, at the offices of the Secretary of State, 99 Washington Avenue, Albany, New York. The Affidavit of Service filed with the Court on March 12, 2012, is attached hereto as Exhibit “B.”

13. David Pisanelli, Esq., attorney for M&C of Dutchess, LLC, contacted my office following our service of the Summons and Amended Complaint upon M&C of Dutchess, Inc., to acknowledge that his client (the purported LLC) received service of the Summons and Amended Complaint, and to inform our office that M&C of Dutchess, LLC would not be appearing in this action and would accept the entry of default judgment against it.

14. On or about May 16, 2012, Mr. Pisanelli officially acknowledged and accepted service of the Summons and Amended Complaint on behalf of M&C of Dutchess, LLC. A copy of Mr. Pisanelli’s Acceptance of Service filed with the Court on June 7, 2012, is attached hereto as Exhibit “C.”

15. Upon information and belief, the purported members of M&C of Dutchess, LLC are not infants or incompetents.

16. Upon information and belief, the purported members of M&C of Dutchess, LLC are not now engaged in any kind of service with any branch of the military service of the United States or of the State of New York, nor in training or education under the supervision of the United States or such state after the induction into military service; and at no time since the service of the Summons and Amended Complaint have they been engaged in any such service.

17. The time for M&C of Dutchess, LLC to answer or move with respect to the Amended Complaint has expired, and M&C of Dutchess, LLC has not answered or otherwise responded to the Amended Complaint.

18. The time for M&C of Dutchess, LLC to plead has not been extended.

19. M&C of Dutchess, LLC is now in default in pleading.

20. On August 22, 2012, the Clerk of this Court entered a certificate of the entry of default against M&C of Dutchess, LLC, a copy of which is attached hereto as Exhibit "D."

21. UFP is not seeking an award of money damages against M&C of Dutchess, LLC; it seeks a judgment that M&C of Dutchess, LLC, and all persons claiming by, through, or under it subsequent to the filing of the notice of pendency of this action, be forever barred and foreclosed of all estate, right, claim, interest, lien, title or equity of redemption of, in, and to the mortgaged premises being foreclosed herein, and each and every part and parcel thereof.

22. No previous application for the relief requested herein has been made.

WHEREFORE, for all the foregoing reasons, it is respectfully requested that this Court enter default judgment against M&C of Dutchess, LLC for the relief demanded in the Amended Complaint.



Michael W. Deyo

Sworn to before me this
19 th day of October, 2012



Debbie Van Ness
NOTARY PUBLIC

DEBBIE A. VANNESS
Notary Public, State of New York
No. 01VA6052815
Qualified in Albany County
Commission Expires December 26, 2014